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9 UNITED STATES DISTRICT COURT

10 DISTRICT OF NEVADA

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UNITED STATES OF AMERICA,	Plaintiff,	vs.	GREGORY BURLESON,	Defendant.	No. 2:16-cr-046-GMN-PAL	DEFENDANT GREGORY BURLESON'S UNOPPOSED MOTION TO LIFT THE STAY OF HIS COMPASSIONATE RELEASE MOTION

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Defendant Gregory Burleson, though his attorney, hereby respectfully requests that the Court lift the stay of the remainder of his compassionate release motion (ECF No. 3541) which this Court imposed pending the outcome of *United State v. Stain*, Ninth Circuit Case No. 21-10154 (E.C.F. No. 3562), because the *Stain* court had before it the issue of whether "stacked" §924(c) sentences were grounds for relief under the compassionate release statute.<sup>1</sup>

The reason that the stay should end and the Court should rule on the motion is that the *Stain* case was decided on February 17, 2022, the time for petitions for panel or en banc rehearing has expired, and the mandate has been issued. The unpublished memorandum decision

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<sup>1</sup> Undersigned counsel filed a motion under the compassionate release statute that included stacked §924(c) sentences as one ground among others for compassionate release as the case law addresses that issue as one of compassionate release. The Court bifurcated the motion and separated out this issue because it considered that part of the motion to be one for sentence reduction due to the fact that Mr. Burleson would not be immediately released if the Court granted *only* that portion of the motion.

1 (attached) does not decide the issue of stacked §924(c) sentences under the compassionate  
2 release statute. Undersigned counsel has conferred with counsel for both parties and been  
3 informed that neither intends to file a petition for writ of certiorari. There is no telling if or how  
4 long from now the Ninth Circuit will again revisit, let alone decide, this issue, and even if it does  
5 the issue is likely to end up in the Supreme Court. Therefore, this issue is ripe for decision.

6 Assistant U. S. Attorney Elizabeth O. White, counsel for the government in both this  
7 Court and the pending Ninth Circuit Appeal, has graciously indicated that the government does  
8 not oppose this motion.

9 Accordingly, Defendant Gregory Burleson respectfully requests that the stay be lifted and  
10 that the Court rule on the remainder of the motion as its calendar permits. A proposed order to  
11 lift the stay is attached for the Court's convenience.

12 Dated: April 22, 2022

13 Respectfully submitted,

14 */s/ Mark D. Eibert*

15 Mark D. Eibert

16 Attorney for Defendant Gregory Burleson

**CERTIFICATE OF SERVICE**

The undersigned hereby certifies that his business mailing address is P. O. Box 1126, Half Moon Bay, CA 94019, that he is not a party to this action, that he is a citizen of the United States of such age and discretion to be competent to serve papers, and that on the below date he caused a true and accurate copy of

MOTION TO LIFT STAY AND PROPOSED ORDER THEREFORE

To be served via ECF on the United States District Court, which will e-serve

Steven Myhre, Esq.  
Assistant U.S. Attorney Attorney for Plaintiff  
U.S. Attorney's Office  
501 Las Vegas Blvd. South, Suite 1100  
Las Vegas, NV 89101

ELIZABETH O. WHITE, ESQ. Attorney for Plaintiff  
Chief, Appellate Division  
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United States Attorney's Office  
400 South Virginia Street, Suite 900  
Reno, NV 89501

I declare under penalty of perjury under the laws of the United States that the foregoing is true and correct to the best of my knowledge and belief. Executed on April 22, 2022 at Half Moon Bay, California.

*/s/ Mark D. Eibert*

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6 UNITED STATES DISTRICT COURT  
7 DISTRICT OF NEVADA  
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10 UNITED STATES OF AMERICA, } Case No.: 2:16-cr-046-GMN  
11 Plaintiff-Appellee, } [PROPOSED] ORDER LIFT STAY  
12 vs. }  
13 GREGORY BURLESON, }  
14 Defendant-Appellant. }  
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16 **ORDER**

17 Good cause appearing therefore, it is hereby ORDERED as follows:

18 The stay imposed by this Court on defendant's motion for sentencing reduction (E.C.F.  
19 No. 3529) in its Order dated November 4, 2021 (E.C.F. No. 3562) is hereby lifted.

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21 **IT IS SO ORDERED.**

22 Dated this 25 day of May, 2022.

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26 Gloria M. Navarro, District Judge  
27 UNITED STATES DISTRICT COURT  
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